

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2006-13

JOHN EDWARD BAKA
116 Portola Drive, Apt. 1
San Francisco, California 94131-1549

Certified Public Accountant
Certificate No. CPA 73539

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision herein.

This Decision shall become effective on October 20, 2006.

It is so ORDERED September 20, 2006.


FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 BILL LOCKYER, Attorney General
of the State of California
2 JOSHUA A. ROOM, State Bar No. 214663
Deputy Attorney General
3 California Department of Justice
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6 Attorneys for Complainant

7 **BEFORE THE**
8 **CALIFORNIA BOARD OF ACCOUNTANCY**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2006-13

12 JOHN EDWARD BAKA
116 Portola Drive, Apt. 1
San Francisco, California 94131-1549

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

13 Certified Public Accountant
14 Certificate No. CPA 73539

Respondent.

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16 In the interest of a prompt and speedy settlement of this matter, consistent with the
17 public interest and the responsibility of the California Board of Accountancy of the Department
18 of Consumer Affairs, the parties agree to the following Stipulated Settlement and Disciplinary
19 Order to be submitted to the Board for approval and adoption in disposition of the Accusation.

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21 PARTIES

22 1. Carol Sigmann (Complainant) is the Executive Officer of the California
23 Board of Accountancy. She brought this action solely in her official capacity and is represented
24 in this matter by Bill Lockyer, Attorney General of the State of California, by Joshua A. Room,
25 Deputy Attorney General.

26 2. Respondent John Edward Baka (Respondent) is represented in this
27 proceeding by attorney Karen L. Bae, whose address is Murphy, Pearson, Bradley & Feeney, A
28 Professional Corporation, 88 Kearny Street, 10th Floor, San Francisco, CA 94108.

3. On or about May 9, 1997, the California Board of Accountancy issued Certified Public Accountant Certificate No. CPA 73539 to John Edward Baka (Respondent). The Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. AC-2006-13 and will expire on July 31, 2007, unless renewed.

JURISDICTION

4. Accusation No. AC-2006-13 was filed before the California Board of Accountancy (Board), Department of Consumer Affairs, and is pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 10, 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. AC-2006-13 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. AC-2006-13. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

8. Respondent understands and agrees that the charges and allegations in Accusation No. AC-2006-13, if proven at a hearing, constitute cause for imposing discipline upon his Certified Public Accountant Certificate No. CPA 73539. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation. Respondent hereby gives up his right to contest those charges.

9. Respondent agrees that his Certified Public Accountant Certificate No. CPA 73539 is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and/or the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

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1 12. The parties understand and agree that facsimile copies of this Stipulated
2 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
3 force and effect as the originals.

4 13. In consideration of the foregoing admissions and stipulations, the parties
5 agree that the Board may, without further notice or formal proceeding, issue and enter the
6 following Disciplinary Order:

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8 **DISCIPLINARY ORDER**

9 IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. CPA
10 73539 issued to John Edward Baka (Respondent) is revoked. However, the revocation is stayed
11 and Respondent is placed on probation for three (3) years on the following terms and conditions.

12 1. **Obey All Laws.** Respondent shall obey all federal, California, other state,
13 and local laws, including those rules relating to the practice of public accountancy in California.

14 2. **Submit Written Reports.** Respondent shall submit, within ten (10) days
15 of completion of each quarter, written reports to the Board on a form obtained from the Board.
16 Respondent shall submit, under penalty of perjury, such other written reports, declarations, and
17 verification of actions as required. These shall contain statements relative to Respondent's
18 compliance with all terms and conditions of probation. Respondent shall immediately execute all
19 release of information forms as may be required by the Board or its representatives.

20 3. **Personal Appearances.** Respondent shall, during the period of probation,
21 appear in person at interviews/meetings as directed by the Board or its designated
22 representatives, provided such notification is accomplished in a timely manner.

23 4. **Comply With Probation.** Respondent shall fully comply with the terms
24 and conditions of the probation imposed by the Board and shall cooperate fully with
25 representatives of the Board of Accountancy in its monitoring and investigation of the
26 Respondent's compliance with probation terms and conditions.

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1 5. **Practice Investigation.** Respondent shall be subject to, and shall permit,
2 practice investigation of the Respondent's professional practice. Such a practice investigation
3 shall be conducted by representatives of the Board, provided notification of such review is
4 accomplished in a timely manner.

5 6. **Comply With Citations.** Respondent shall comply with all final orders
6 resulting from citations issued by the Board of Accountancy.

7 7. **Tolling of Probation For Out-of-State Residence/Practice.** In the event
8 Respondent leaves California to reside or practice outside the state, Respondent must notify the
9 Board in writing of the dates of departure and return. Periods of non-California residency or
10 practice outside the state shall not apply to reduction of the probationary period, or of any
11 suspension. No obligation imposed herein, including requirements to file written reports,
12 reimburse Board costs, or make restitution to consumers, shall be suspended or otherwise
13 affected by periods of out-of-state residency or practice except at written direction of the Board.

14 8. **Continuing Education Courses.** Respondent shall complete and provide
15 proper proof to the Board of twenty-four (24) hours of continuing professional education (CPE)
16 courses in audit-related subjects, at least eight (8) hours of which shall include instruction on
17 audits of employee benefit plans. The professional education courses shall be completed within a
18 period of time designated and specified in writing by the Board or its designee, which time-frame
19 shall be incorporated as a condition of this probation. This required coursework shall be in
20 addition to continuing education requirements for relicensing. Failure to satisfactorily complete
21 the required courses as scheduled or failure to complete same no later than one hundred (100)
22 days prior to the termination of probation shall constitute a violation of probation.

23 9. **Cost Reimbursement.** Respondent shall reimburse the Board \$5,108.20
24 for its costs of investigation and prosecution. Full payment shall be made within thirty (30) days
25 of the date the Board's decision is final unless another payment plan is agreed to by the Board or
26 its representative in writing, in which case such plan shall be incorporated as a condition of this
27 probation. Any such plan must result in full payment within two (2) years of the effective date.

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

DATED: 7/14/06.

BILL LOCKYER, Attorney General
of the State of California



JOSHUA A. ROOM
Deputy Attorney General
Attorneys for Complainant

DOJ Matter ID: SF2006400686
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Exhibit A

Accusation No. AC-2006-13

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of the State of California
JOSHUA A. ROOM, State Bar No. 214663
Deputy Attorney General
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Attorneys for Complainant

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In the Matter of the Accusation Against:

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JOHN EDWARD BAKA
116 Portola Drive, Apt. 1
San Francisco, California 94131-1549

A C C U S A T I O N

Certified Public Accountant
Certificate No. CPA 73539

Respondent.

Complainant alleges:

PARTIES

1. Carol Sigmann (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy of the Department of Consumer Affairs.

2. On or about May 9, 1997, the California Board of Accountancy issued Certified Public Accountant Certificate No. CPA 73539 to John Edward Baka (Respondent). The Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2007, unless renewed.

JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 5100 of the Code provides, in pertinent part, that the Board may suspend, revoke, refuse to renew, or censure any permit or certificate granted by the Board.

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 5070.6 of the Code provides that an expired permit may be renewed at any time within five years after its expiration by application and payment of fees.

STATUTES, REGULATIONS, AND PROFESSIONAL STANDARDS

6. Section 5100 of the Code provides, in pertinent part, that the Board may revoke, suspend, or refuse to renew any permit or certificate issued by the Board, or may censure the holder of that permit or certificate, for "unprofessional conduct" including, but not limited to:

"(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052."

7. California Code of Regulations, title 16, section 58 (Board Rule 58), provides that licensees engaged in the practice of public accountancy shall comply with all applicable professional standards, including but not limited to generally accepted accounting principles and generally accepted auditing standards.

8. Standards of practice pertinent herein include, without limitation:

a. Generally Accepted Auditing Standards (GAAS) discussed in the Statements on Auditing Standards (SAS) issued by the American Institute of Certified Public Accountants (AICPA). The SAS are codified, by "AU" number, in the AICPA *Codification of Statements on Auditing Standards*. Those relevant herein include:

AU § 150 (Generally Accepted Auditing Standards);

AU § 311 (Audit Planning and Supervision);

AU § 319 (Consideration of Internal Control - Financial Statement Audit);

1 AU § 336 (Using the Work of a Specialist);

2 AU § 339 (Working Papers);

3 AU § 560 (Subsequent Events).

4 b. Additional audit, accounting, and reporting standards contained in
5 the Audit and Accounting Guide - Employee Benefit Plan (AAG-EBP) issued by the AICPA; the
6 standards contained therein which are relevant herein include:

7 AAG-EBP § 7.59 (Auditing Procedures for Other Investments);

8 AAG-EBP § 10.04 (Auditing Participant Data, Allocations, Obligations);

9 AAG-EBP § 10.05 (Auditing Employer Participant Records);

10 AAG-EBP § 11.09 (Auditing Party-in-Interest Relationships).

11 9. Section 5107 of the Code provides, in pertinent part, that the Executive
12 Officer of the Board may request the administrative law judge, as part of the proposed decision in
13 a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed
14 a violation of this chapter to pay to the Board reasonable costs of investigation and prosecution
15 of the case, including, but not limited to, attorneys' fees.

16 BACKGROUND FACTS

17 10. For the six years ended March 31, 1997 to March 31, 2002, audits of the
18 Independent Electric Supply Inc. Employee Stock Ownership Plan and Trust-Stock Bonus Plan
19 (IES-ESOP) were conducted by the Accountancy Partnership of Fisher & Bagley (PAR 3086).

20 11. Respondent performed the IES-ESOP audit for the year ended March 31,
21 2002, under the supervision of engagement partner George Alan Fisher (CPA 50369).

22 CAUSE FOR DISCIPLINE

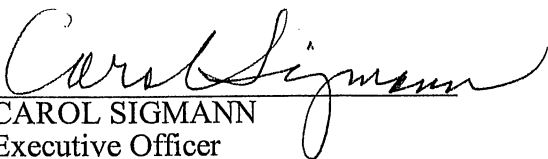
23 (Gross Negligence, Repeated Acts of Negligence)

24 12. Respondent is subject to disciplinary action under section 5100, subsection
25 (c), of the Code, in that Respondent participated in and contributed to the Fisher & Bagley audit
26 of the IES-ESOP for the year ended March 31, 2002, which audit was characterized by extreme
27 departures from applicable professional standards constituting gross negligence and/or repeated
28 acts of negligence. Among the departures from professional standards were the following:

1 2. Ordering Respondent to pay the California Board of Accountancy the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 5107; and

4 3. Taking such other and further action as is deemed necessary and proper.

5
6 DATED: May 3, 2006

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8 
9 CAROL SIGMANN
10 Executive Officer
11 California Board of Accountancy
12 Department of Consumer Affairs
13 State of California
14 Complainant

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